principle of Anglo-Saxon Criminal Law, on which Indian Law is based ..... This section comes into operation only if the investigation cannot be completed within the period of twenty-four hours fixed by section 57 (our section 28), and if the Magistrate authorises detention in the custody of the police, he is enjoined to record his reasons for so doing....."

It seems clear, therefore, that the lower Court had fully complied with the provisions of section 117. The arguments of learned counsel for the Appellant may be considered to be valid only if section 387(i) is so construed as to override section 117 and in this respect, it is my view that the Legislature does not legislate in vain, a situation which in my opinion would arise if section 117 is rendered nugatory and without legal effect by section 387(i).

For the reasons given, grounds (1) and (2) of the Appeal fail.

The appeal is dismissed.

Appeal dismissed.

Solicitor: *M.S. Sandhu & Co.*

DUNLOP MALAYSIAN INDUSTRIES BHD. v. PUBLIC PROSECUTOR

[A. Cr. J. (Peh Swee Chin J.) May 31, 1984]

[Seremban – Criminal Appeal No 67 of 1983]

Criminal Law and Procedure – Corporation found guilty of pollution offence – Fine imposed – Sentence of one day imprisonment imposed on factory manager – Appeal – Purposive approach in interpretation – Subordinate Courts Act, 1948, s. 99A & 3rd Schedule para. 20.

Company Law – Corporation found guilty of pollution offence – Factory manager sentenced to imprisonment of one day – Misapplication of law by magistrate.

In this case the appellant, a corporation had pleaded guilty to a pollution offence and had been convicted and fined $10,000-00. The learned Magistrate further sentenced to one day's imprisonment the factory manager, who represented the appellant at the hearing. An appeal was lodged against this order of one day's imprisonment. The learned Magistrate purported to act under section 99A of the Subordinate Courts Act, 1948 and paragraph 20 of the Third Schedule thereto.

Held, the powers set out in the Third Schedule of the Subordinate Courts Act, 1948, can be exercised only in the manner prescribed by a written law. The learned Magistrate had misapplied the law and the appeal must be allowed and the sentence of one day's imprisonment set aside.

Case referred to:

(1) *Kammins Ballrooms Co. Ltd.* v. *Zenith Investments (Torquay) Ltd.* [1971] A.C. 850, 880.

CRIMINAL APPEAL.

Vinayak P Pradhan for the appellants.

Mohamed Zaki bin Mohamad Yasin (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Peh Swee Chin J.: This appeal involves a pollution offence under section 25(1) of the Environmental Quality Act, 1974 in which the sole defendant, a corporation registered under the Companies Act, 1965, was fined $10,000/- on its plea of guilty. The matter did not end there, for the learned Magistrate further sentenced to one (1) day's imprisonment, one Zubir bin Abdul Rauf (the factory manager of the defendant/corporation), who represented the defendant at the hearing and against this order of one day's imprisonment an appeal was lodged.

The order appealed from appears to have been so highly irregular that it was not surprising that learned counsel for the appellant, in his submission, took the Court through the rules of natural justice and the articles of the Federal Constitution dealing with the fundamental liberty of a person.

The learned Magistrate however relied, for this remarkable state of affairs, on para. 20 of the Third Schedule referred to in section 99A of the Subordinate Courts Act, 1948.

Section 99A reads as follows:-

"99A. In amplification and not in derogation of the powers conferred by this Act or inherent in any court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrates Court shall have the further powers and jurisdiction set out in the Third Schedule."

Para. 20 of the Third Schedule reads as follows:-

"20. Power, where any corporation is guilty of any act or omission which, if it were an individual, would render it liable to arrest or commitment, to order the arrest of or commit any officer of the corporation who caused or wilfully permitted or contributed to the act or omission, and also to fine the corporation."

Read literally, para. 20 may indeed mean the way it had meant to the learned Magistrate. Such literal reading would however, in the circumstances of the case, lead to a result totally unjust and

repugnant to all our notions of justice for Encik Zubir was jailed, (though for only one day), when he was not a defendant, neither was he charged with the offence in question and he had, unmistakably, represented the defendant/corporation in appearing in court and pleading guilty to the offence. Such a literal reading, therefore, could not be adopted as Parliament could not have intended such a totally unjust result or gross injustice.

Such a result aforesaid could not have been intended by Parliament, if one is to adopt a purposive approach in interpreting para. 20. This approach was explained by Lord Diplock in *Kammins Ballrooms Co. Ltd.* v. *Zenith Investments (Torquay) Ltd.*[1] . The Subordinate Courts Act, 1948, must have been clearly intended to define the limits of jurisdiction and powers of various classes of Subordinate Courts. It is certainly not a statute of criminal law administration. I use the expression of "criminal law" to include statutory offences.

The powers set out in the Third Schedule can obviously be exercised only in the manner or in such manner as may be prescribed by a written law other than the Act itself. Thus, for example, para. 20 of the Third Schedule empowers the Subordinate Courts to enlarge time *etc.* for any proceedings. It would be equally wrong for any magistrate to invoke this paragraph on his own motion to extend such time regardless of the Limitation Act, 1953 which has been validly relied on. Para. 20 therefore shall be read as being subject to the modification, that the arrest or committal mentioned therein shall be according to any manner as may be prescribed by any written law other than the Subordinate Courts Act, 1948.

In the light of what is stated above, the learned Magistrate had therefore wholly misapplied the law or para. 20 of the said Third Schedule. The appeal must therefore be allowed and the sentence of one day's imprisonment set aside.

Appeal allowed.

Solicitors: *Skrine & Co.*

PUBLIC PROSECUTOR v. OON LAI HIN & ORS.

[O. Cr. J. (Gunn Chit Tuan J.) July 10 & 24, 1984]

[Kuala Lumpur – Selangor Criminal Trial No. 17 of 1981]

Criminal Law and Procedure – Charge of trafficking in dangerous drug – Sentence – Life imprisonment imposed – Exceptional circumstances – Dangerous Drugs Act, 1952, s. 39b(2)

Dangerous Drugs – Charge of trafficking – Life imprisonment – Exceptional circumstances – Dangerous Drugs Act 1952, s. 39B(2)

In this case the accused pleaded guilty to a charge of trafficking in dangerous drugs, *to wit* morphine. The accused was arrested on June 30, 1981 but the trial did not take place till July 10, 1984. The accused was sentenced to life imprisonment and 14 strokes of rotan. The Public Prosecutor appealed against sentence.

Held, while the amount of the drug involved was large, if the respondent had had the benefit of an early trial, say in 1981 or 1982, it was questionable whether public opinion would then have so hardened as to demand that a court should impose the ultimate penalty of death on him. Out of some sense of compassion, the court exercised its discretion and imposed the sentence of imprisonment for life and fourteen strokes of the rotan.

Cases referred to:

(1) *Public Prosecutor* v. *Tan Hock Hai* [1983] 1 M.L.J. 163.

(2) *Loh Hock Seng* v. *Public Prosecutor* [1980] 2 M.L.J. 13, 14.

CRIMINAL TRIAL.

Azmi bin Ahmad (Deputy Public Prosecutor) for the Public Prosecutor.

W.P. Leong for the first and third respondents.

S. Augustin for the second respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J. : The Public Prosecutor has appealed against the sentence of life imprisonment and 14 strokes of the rotan imposed by me under the former section 39B(2) of the Dangerous Drugs Act, 1952, (the Act) on one Oon Lai Hin (the respondent) who was convicted on a charge of trafficking in a dangerous drug under section 39B(1)(a) of the Act..

Briefly the facts, as admitted by the respondent, showed that he was stopped by a party of customs officers in Klang on June 30, 1981, whilst he was driving a car No. PAA. 5431 with two